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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. for Authorization To Provide In-Region, InterLATA Services in New York	)	CC Docket No. 99-295

JOINT COMMENTS OF E.SPIRE COMMUNICATIONS, INC. AND NET2000 COMMUNICATIONS SERVICES, INC.

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SUMMARY

e.spire Communications, Inc. ("e.spire") and Net2000 Communications Services, Inc. ("Net2000") respectfully submit these comments in opposition to grant of Bell Atlantic Section 271 in-region, interLATA authority in the State of New York. Bell Atlantic has failed to show that the New York local communications market is fully and irreversibly open to competition to support grant of Section 271 authority.

Bell Atlantic also has and continues to impose unreasonable restrictions on resale through the imposition of excessive contract termination penalties. These types of restrictions hamper the development of emerging local competition by preventing existing Bell Atlantic customers from entering into contracts with competing carriers without incurring excessive monetary penalties and costs for terminating existing contracts with Bell Atlantic. Accordingly, we further urge that the application be denied for failure to demonstrate nondiscriminatory provision of resale arrangements by Bell Atlantic. Any grant of Section 271 authority should further be expressly conditioned on elimination of such excess excessive contract termination penalties through a combination of Bell Atlantic certification obligations and "fresh look" periods as detailed herein.

Bell Atlantic should not receive Section 271 authority before it has unequivocally been established that Bell Atlantic will immediately, and on a continuing basis, comply with any enhanced extended link ("EEL") requirements to be established in the Commission's adopted, but not yet released, *UNE Remand Order*. Because EELs will provide competitive local exchange carriers ("CLECs") with an economic alternative to costly collocation arrangements for establishing wider or ubiquitous market coverage, prior to any grant of 271 authority, the

FCC should at a minimum, require that Bell Atlantic certify that it will immediately comply with all EEL access requirements and also preempt any contrary state restrictions on competitor nondiscriminatory access to EELs.

Furthermore, this application is defective because Bell Atlantic has failed to make a *prima facie* case that it has provisioned UNEs and resale on a nondiscriminatory basis in compliance with the Section 271 checklist. Bell Atlantic's application does not demonstrate compliance with NYPSC specified performance intervals for provisioning of these elements. Moreover, Bell Atlantic has missed interconnection trunk provisioning intervals for e.spire and delayed provisioning of interconnection arrangements to Net2000, resulting in delayed service to our customers.

Finally, Bell Atlantic has not offered sufficiently self-executing and effective private remedies to ensure pre- and post-Section 271 compliance with performance benchmarks. Sufficient remedies are vital to preserve emerging local competition and to prevent back-sliding by Bell Atlantic in its Section 271 performance commitments. Such remedies must be calculated to fully compensate injury of individual CLECs, as well as suppress market-wide anticompetitive harm, that has or will directly or indirectly arise out of non-compliance by Bell Atlantic with respect to its pre- or post- Section 271 obligations. Accordingly, before any Section 271 authority may be granted, we further urge that additional performance remedies, as described herein, be imposed on Bell Atlantic.

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JOINT COMMENTS OF E.SPIRE COMMUNICATIONS, INC.
AND NET2000 COMMUNICATIONS SERVICES, INC.

e.spire Communications, Inc. ("e.spire"), and Net2000 Communications Services, Inc. ("Net2000"), by their attorneys, hereby submit these joint comments in opposition to the above-captioned application of New York Telephone Company d/b/a Bell Atlantic-New York and its named subsidiaries and affiliated entities (collectively, "Bell Atlantic") for authority to provide in-region, interLATA services in the State of New York.[1] Bell Atlantic has failed to demonstrate, as required by Section 271 of the Telecommunications Act of 1996 (the "1996 Act"), that competitive conditions in the local telecommunications market in New York support grant of its application for in-region, interLATA authority or that any fledgling competition there could survive if the Section 271 in-region, interLATA entry restriction on Bell Atlantic is lifted. Accordingly, for the reasons discussed more fully below, e.spire and Net2000 strongly urge that

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1 e.spire and Net2000 are active members of the Association for Local Telecommunications Services ("ALTS") and the Competitive Telecommunications
(continued...)

the Commission deny this application. If the Commission nevertheless should decide to grant Bell Atlantic in-region, interLATA authority, we further respectfully submit that such grant be made only if subject to the conditions delineated herein.

I. INTRODUCTION

e.spire[2] and Net2000[3] are companies that represent facilities-based and resale business strategies for providing consumers in their coverage markets, including New York State, with integrated competitive local exchange carrier ("CLEC") and interexchange ("IXC") telecommunications services. Individually, each has invested millions of dollars in equipment, services and human resources to the execution of these strategies.[4] However, facilities-based competitive entry is being stymied by Bell Atlantic's willful refusal to provide competitors with interconnection and unbundled network elements ("UNEs") on a just, reasonable and nondiscriminatory basis as required by Section 271 and 251 of the 1996 Act. Bell Atlantic has

(...continued)

Association ("CompTel"). These comments are intended to supplement the assocations' extensive filings also being made in this docket with company-specific issues.

2 e.spire seeks to be a leading facilities-based ICP to small- and medium-sized businesses. The Company is one of the first Competitive Local Exchange Carriers ("CLECs") to combine the provision of voice services, such as dedicated access, local, and long distance, with advanced data services, such as frame relay, asynchronous transfer mode ("ATM"), and Internet services. By the end of 1999, e.spire also expects to offer digital subscriber line ("DSL") services. The Company currently offers voice services in 38 U.S. markets where it has state-of-the-art local fiber optic networks and offers data services in 48 U.S. markets where it provides access to 387 data points-of-presence ("POPs"). Through its subsidiary, ACSI Network Technologies, Inc., e.spire also offers network design and construction services to CLECs, interexchange carriers ("IXCs"), corporations, and municipalities in selected markets in the U.S.

3 Net2000 will be switching away from resale to full facilities-based strategy within six months.

4 We respectfully disagree, however, with the Bell Atlantic's suggestion that the existence of competitor investment in a market entry strategy, alone, means that it has met Section 271(c)(1)(A)'s 14-point competitive checklist. *Cf.* Application at 5.

failed to provide clear and convincing evidence that it has provisioned UNEs and interconnection trunks in compliance with Section 271 or New York Public Service Commission's ("NYPSC") requirements.

As demonstrated below, Bell Atlantic also has dragged its feet in provisioning competitors with interconnection trunks, and ordering unbundled elements and resale services, notwithstanding the critical nature of these elements to the emergence of effective local competition. Such conduct directly hinders the ability of carriers such as e.spire and Net2000 to provide competitive local exchange services. Furthermore, with respect to comparatively new UNEs that will support competitive deployment of advanced telecommunications services in New York, like digital subscriber lines ("DSL") and enhanced extended links ("EELs"), Bell Atlantic has not even bothered to submit sufficient performance data, to the extent available.

In addition, Bell Atlantic has imposed excessive, anticompetitive, termination penalties on existing customer contracts that are an unreasonable and discriminatory restriction on resale in contravention of Sections 251 and 271. Finally, notwithstanding the effort of the NYPSC, Bell Atlantic has not committed itself to private and self-executing enforcement mechanisms to ensure pre- and post-Section 271 compliance with performance benchmarks necessary to safeguard local competition. Accordingly, we strongly urge that the application be denied, or if granted, expressly conditioned on the requirements specified herein.

II. BELL ATLANTIC CONTINUES TO IMPOSE UNREASONABLE RESALE RESTRICTIONS THROUGH THE IMPOSITION OF PUNITIVE CONTRACT TERMINATION PENALTIES

Bell Atlantic has seized upon the effective absence of real widespread competition in New York to exercise their monopoly power and bind customers in long-term contracts. As competition now begins to develop in New York and customers seek to take advantage of competitive service offerings, they find that they are locked in to Bell Atlantic services contracts with excessive termination penalties.

As an initial matter, only firms with market power can systematically require excessive termination penalties. As noted by the U.S. Supreme Court, excessive termination penalties lock-in customers to contracts and effectively remove them from the competitive marketplace.[5] Indeed, the lock-in effect is a well–established antitrust concept recognizing that consumers can be denied the benefits of competition through operation of long-term contracts. The lock-in concept was most recently addressed by the Supreme Court in its 1992 Kodak decision.[6] Kodak was charged with seeking to impose high service costs on purchasers of its copier equipment who were locked in to long-term service agreements. The Supreme Court noted consumers' lack of information about better deals, and noted that even those customers with sufficient information may suffer uneconomic exploration costs from the lock-in effects. The *Kodak* Court further observed that: "(i)f the cost of switching is high, consumers who already have purchased the equipment, and are thus `locked in,' will tolerate some level of service-price increases before changing equipment brands." *See id.*

Excessive termination penalties can dramatically increase the cost of switching carriers so that effects of competitive market forces are blunted or eliminated. In such circumstances, government intervention is warranted to protect consumers and to preserve a competitive marketplace. This issue is not theoretical. In New York, Bell Atlantic has routinely

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5 United States v. General Dynamics Corp., 415 U.S. 486, 501 (1974) (explaining that the ability of market participants to wield competitive influence in the marketplace is reduced or eliminated by their participation in long-term requirements contracts).

6 Eastman Kodak Co. v. Image Technical Services, 504 U.S. 451, 476 (1992).

demonstrated that it will lock customers in to long term agreements that amount to "adhesion" contracts. Consumers are being denied access to competitive options because the termination penalties they would incur for switching carriers are unreasonably high. As a recent example, one Bell Atlantic customer in New York is five years into a ten year contract – an agreement that was signed before the 1996 Act. The amount of the contract is $3,400 per month. However, under the terms of this contract, the customer would have to pay more than $68,000 to Bell Atlantic before switching to a carrier like e.spire or Net2000.

Some customers are not even aware that they agreed to such termination penalties and, as will be discussed below, in some cases the customer may not have agreed to the term. For example, one Bell Atlantic customer encountered by Net2000, in New York, indicated that while they had signed an agreement for T-1 lines, the 5-year term of the contract was buried in the document and was not mentioned by the Bell Atlantic account manager. The customer was not aware of the term until well after the agreement had been signed.

Many customers have expressed a desire to take advantage of the savings offered by competition but have explained that the termination penalties associated with their current ILEC contracts render that option too expensive. For example, Bell Atlantic's current Flex Path T-1 service offering is typically offered to customers as a "take or pay" contract. Customers cannot realistically terminate this contract to move to a competitor since they will be charged for the services regardless. Shockingly, it does not appear that customers are entitled to any additional discounts based on the excessive term of the agreement. It is our understanding that Bell Atlantic pricing for the Flex Path T-1 service is the same whether it is taken as a month-to-month contract or a 5 year deal. The Flex Path T-1 service is offered as a 12 month (1 year) to 120 months (10 year) contract and the prices are not lowered if the customer is on a longer term.

Alternatively competitors must offer term and volume discounts to garner business. For example, Net2000 offers varying term agreements each having substantial discounts for longer terms and no term serving longer than 3 years. Not only are CLECs required by market pressures to offer shorter terms and discounts based on these terms, CLECs cannot impose the "take or pay" termination liability that Bell Atlantic can. Customers will not allow new local service market entrants to impose the same sort of "adhesion."

More egregious than failing to provide customers favored pricing for executing longer term agreements is the fact that Bell Atlantic does not always get customer signatures for these contracts. Net2000 has repeatedly contacted Bell Atlantic customers in New York who were signed up for Bell Atlantic service by sales agents but never signed contracts. On the aforementioned Flex Path T-1 service contracts the agents are compensated based on the length of the service term. Agents are routinely locking customers up for this service without informing customers about the length of the term. When these customers contact Bell Atlantic in order to switch carriers, they are told that they are under 5 or even 10 year term agreements. In many cases, Bell Atlantic cannot produce paperwork showing the customer affirmatively signing up for this term so it appears that Bell Atlantic and/or the sales agents for Bell Atlantic simply default customers to a the longest term possible when processing the sale.

Despite its representation to the contrary, Bell Atlantic has not supported its claim that the contractual monetary penalties it imposes on customers for termination of service are just and reasonable. *Cf.* Application at 45-6. Such support information is necessary to identify whether Bell Atlantic contract termination penalties impose unjust or unreasonable restrictions on resale (and competition generally), and thereby "lock-up" customers in long-term contracts with Bell Atlantic who might otherwise switch to a competitive carrier but for the punitive early termination penalty. Moreover, in connection with review of RBOC contract termination penalties, the *BellSouth Section 271 I Order* held that the FCC "would want to review such fees and request that BOCs provide information justifying the level of cancellation or transfer fees in future applications."[7] Accordingly, absent justification of termination penalties in its customer contracts, Bell Atlantic has failed to make the requisite *prima facie* showing that it has complied with its nondiscriminatory resale obligations in accordance with the provisions of Section 271 and 251 of the Act and the application should be denied.[8]

Indeed, this issue has already been addressed at the state level and the Bell Atlantic penalties have been found to be unfair and per se excessive. Evidence that Bell Atlantic has imposed excessive contract termination penalties in the past highlights the need for Bell Atlantic to comply with the requirement that it submit compelling information to justify such termination penalties in the context of this 271 application proceeding. Just last year, the NYPSC found that early termination penalties in Bell Atlantic customer service arrangements ("CSAs") to be excessive in the context of reseller assumption of existing Bell Atlantic CSAs in violation of the prohibition on unreasonable resale restrictions contained in Sections 251(b)(1) and 251(c)(4) of the Act.[9] In a subsequent ruling, the NYPSC clarified that Bell Atlantic had a

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7 *See Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, FCC 97-418, CC Docket No. 97-208 at ¶ 222 (released on December 24, 1997) ("*BellSouth 271 I Order*").

8 *See* 47 U.S.C. §§ 271(c)(2)(B)(xiv) and 251(c)(4); *see also BellSouth Section 271 I Order* at ¶ 212.

9 *See Complaint and Request of CTC Communications, Inc. for Emergency Relief Against New York Telephone d/b/a bell Atlantic-New York for Violations of Sections 251(c)(4) and 252 of the Communications Act of 1934, as amended, section 91 of the N.Y. Pub. Serv. Law, and Resale Tariff PSC No. 915*, Case No 98-C-0426, Order Granting Petition, NYPSC, 1998 N.Y. PUC LEXIS 506 (September 14, 1998).

prospective duty to avoid imposing unreasonable restrictions on resale through excessive contract termination penalties.[10]

Based on the foregoing, the commission should deny the application at the very least and delay grant of Section 271 authority until it has reviewed Bell Atlantic's termination liability practices and put corrections in place. As a final protective measure, and to ensure a level competitive playing field, e.spire and Net2000 respectfully submit that the Commission should nevertheless condition any future grant of Section 271 authority on: (1) a Bell Atlantic corporate officer's certification that it will refrain from enforcing any unjust or unreasonable contract termination penalties and; (2) the Commission's imposition of a "fresh look" period on Bell Atlantic's long-term telecommunications service contracts (180 days or greater) to give existing contract customers of Bell Atlantic opportunity to compare their current service with new alternatives, such as competitive carriers, without incurring an unreasonable penalty during this shop-around period. In addition, such fresh-look period should last for at least 180 days to give customers adequate time to reconsider current competitive service offerings.

The Commission has previously applied this type of "fresh look" policy to existing telecommunications service contracts of a monopoly carrier when an area previously subject to monopoly control by the dominant carrier opens to competition or where an area is

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10 *See Complaint and Request of CTC Communications, Inc. for Emergency Relief Against New York Telephone d/b/a bell Atlantic-New York for Violations of Sections 251(c)(4) and 252 of the Communications Act of 1934, as amended, section 91 of the N.Y. Pub. Serv. Law, and Resale Tariff PSC No. 915*, Order Denying Motion to Compel and for Sanctions and Clarifying the Order Granting Petition, in Case No. 98-C-0426, NYPSC, 1999 N.Y. PUC LEXIS 3 (February 1, 1999).

subject to significant changed circumstances.[11] Similarly, grant of Bell Atlantic's Section 271 application would indicate that monopoly control by the dominant carrier conditions had been fully and irreversibly replaced by competition in the local telecommunications market in New York. Under such changed circumstances, imposing a fresh look period on contracts would be in the public interest as it would allow customers who were subject to long term contracts by Bell Atlantic to reap the benefits of emerging local competition.[12]

In light of the foregoing, it should be presumed by the Commission that New York customers entering into contracts with Bell Atlantic prior to Federal Section 271 approval lacked readily available competitive alternatives.

As a final alternative to granting a full fresh look period, e.spire and Net2000 propose that the Commission impose one of two conditions in New York to permit these customers to consider switching to a competitor without unduly harsh penalty: (1) a period would last for one year from the date of finality of Section 271 grant, and during this window

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11 *See Telecommunications Services Inside Wiring; Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, 13 FCC Rcd 3659 at ¶¶ 202, 264-5 (1997); *Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7463-7465 (1992), recon., 8 FCC Rcd 7341, 7342-7359 (1993) (fresh look to enable customers to take advantage of new competitive opportunities under special access expanded interconnection), *vacated on other grounds and remanded for further proceedings sub nom. Bell Atlantic Tel. Cos. v. FCC*, 24 F.3d 1441 [75 RR 2d 487] (1994); *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 2677, 2681-82 (1992) ("fresh look" in context of 800 bundling with interexchange offerings); *Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands*, 6 FCC Rcd 4582, 4583-84 (1991) ("fresh look" requirements imposed in context of air-ground radiotelephone service as condition of grant of Title III license).

12 *See* Joint Comments of the Association for Local Telecommunications Services, Net2000 Communications, Inc., and Teligent, Inc., filed on June 3, 1999 in CC Docket No. 99-142 (the "Declaratory Ruling on Excessive Termination Penalties"); *see also* KMC Telecom, Inc., Petition for Declaratory Ruling, filed on April 26, 1999, in CC Docket No. 99-142 .

Bell Atlantic would be permitted to impose no more than the first year's worth of contract termination liability (*e.g.* if Bell Atlantic contracts are "take or pay", and the customer were to terminate 7 months into the period, for example, they could be charged no more than 5 months worth of charges as a termination penalty, regardless whether the overall term of the contract was more than one year); or (2) termination liability in Bell Atlantic contracts would be tied to actual cost and a sliding scale would apply to the level of termination penalty depending on when (during the contract) a customer terminated the agreement.

III. ABSENT IMPLEMENTATION OF THE FCC'S ENHANCED EXTENDED LINK ("EEL") RULING, GRANT OF 271 AUTHORITY TO BELL ATLANTIC IS PREMATURE

At its September 15 agenda meeting on the *UNE Remand Order*, the FCC decided to require that, under certain circumstances, ILECs may offer enhanced extended links ("EELs") on an unbundled, nondiscriminatory basis. An "EEL" combines an ILEC's unbundled loop, multiplexing/concentrating equipment and dedicated transport, at least in theory, allowing a new entrant to serve customers without having to collocate a switch in every central office in the incumbent's territory. This allows a CLEC to offer the ubiquitous coverage necessary to compete with Bell Atlantic who still owns the vast majority of all lines and customers. Thus, unbundled EEL access is vital as an economic alternative to costly collocation for CLEC entry and will play an important role in fostering facilities-based CLEC competition.[13]

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[13] *See, e.g.*, *Ex Parte* Letter from Carol Ann Bischoff, Executive Vice President and General Counsel, CompTel/ACTA, to Lawrence E. Strickling, dated August 31, 1999, in CC Docket No. 96-98 ("In the short term, the EEL option affords CLECs a number of benefits that will accelerate competition and *position* carriers to make the long term investments necessary to compete").

Based on our understanding of the FCC's public pronouncements regarding the *UNE Remand Order*, the text of which has not been released, the FCC intends to establish at least two options for requesting carriers to obtain an EEL on an unbundled basis; (1) a "carrot-and-stick" approach, whereby an ILEC would be relieved of its duty to provide unbundled access to local circuit switching in defined high-density switching centers in urban markets on the condition that it provide competitors with nondiscriminatory, unbundled access to enhanced extended links; and (2) by prohibiting an ILEC from restricting the conversion of any combination of loops, multiplexing and transport that the ILEC may currently offer as a single service – such as special access service – to an EEL purpose. *See FCC News Release*, FCC 99-238 at 3.

Given that the "carrot-and-stick" approach in the *UNE Remand Order* to EEL access has not been codified, let alone implemented, it is too soon to tell whether it will serve as an adequate incentive for ILECs to give competitors access to EELs on a nondiscriminatory, unbundled basis. Moreover, it also is entirely premature to grant Bell Atlantic's application without even *prima facie* evidence that Bell Atlantic has offered nondiscriminatory access to EELs on an unbundled basis as required under Section 271(c)(2)(B)(ii) of the competitive checklist.[14]

Furthermore, if the Commission grants Bell Atlantic's application, it should first clarify that Bell Atlantic must comply with the *UNE Remand Order*'s requirement that CLECs

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[14] Given that Bell Atlantic has failed to meet conditions or deadlines on grant of the Bell Atlantic-NYNEX merger, there is a compelling concern that it may do the same in the context of this 271 application proceeding. *In the Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, File No. NSD-L-96-10, Memorandum Opinion and Order, 12 FCC Rcd 19985 (1997) (Bell Atlantic/NYNEX Order).

be permitted, without restriction, to convert any existing ILEC service offering that combines loops, multiplexing and transport -- such as special access service -- into an EEL. Absent such clarification, grant of Bell Atlantic's application could leave the RBOC free to impose restrictions on EEL access contrary to the intent of the *UNE Remand Order* and thereby diminish potential EEL-based competition. In particular, the NYPSC currently permits Bell Atlantic to limit CLEC conversion of special access services into an enhanced extended link. *Id.* at 32. This in effect creates a restriction on EEL access, contrary to what is envisioned by the FCC's ruling in the *UNE Remand Order*. Unbundled access to EELs should be made available to CLECs in New York on the same basis eventually established in the EEL rule to be codified in the FCC's *UNE Remand Order*. Moreover, Bell Atlantic's halfhearted promise in the application that it will comply with FCC EEL rules "when they become effective *absent further relief*" demonstrates the absence of a commitment to provide unrestricted access to EELs any time in the near future.

In fact, unless the FCC imposes specific requirements relating to prompt access to EELs, Bell Atlantic can be expected to seek "further relief" in the form of initiating protracted and dilatory legal proceedings. *Cf.* Application at 33 (emphasis added). Accordingly, e.spire and Net2000 further submit that, if the Commission decides to grant Bell Atlantic in-region, interLATA authority – which we emphatically believe it should not – such grant must be: (1) conditioned on unequivocal certification by a Bell Atlantic corporate officer that it will immediately comply with all of the requirements of the FCC's EEL policy *and*; (2) made expressly subject to FCC preemption of any contrary New York law or requirement that restricts, or has the effect of restricting, competitor access to EELs on a nondiscriminatory, unbundled basis.[15]

IV. BELL ATLANTIC HAS NOT DEMONSTRATED SECTION 271-COMPLIANT PROVISIONING OF UNBUNDLED NETWORK ELEMENTS AND RESALE

Bell Atlantic's application does not demonstrate that it has provisioned competitors with UNE and resale requests on a nondiscriminatory basis. Absent sufficient evidence of nondiscriminatory provisioning, grant of Bell Atlantic's application is not justified. First, as demonstrated in subsection A below, Bell Atlantic's application fails to make a *prima facie* case that it is providing competitors with UNEs, resale or interconnection trunking arrangements in accordance with the Section 271 checklist and Section 251, and related FCC and NYPSC standards.[16] Moreover, e.spire and Net2000 have each been hampered by Bell Atlantic's unjust and unreasonably discriminatory practices with respect to provisioning of interconnection arrangements, as demonstrated in subsections B and C, below. Bell Atlantic's failure to provide nondiscriminatory access to interconnection trunks and its continuing provisioning delays directly impede the emergence of effective facilities-based local

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15 For example, Bell Atlantic has recently executed a Section 252(i) most-favored nation ("MFN") amendment to its interconnection agreement with Intermedia Communications that provides for an EEL-like, dedicated transport element. *See* Letter from Sandra DiIorio Thorn, General Counsel, Bell Atlantic NY, to Debra Renner, Acting Secretary, NYPSC, dated October 1, 1999, in Case 97-C-0111 – Interconnection Agreement between Bell Atlantic – New York and Intermedia Communications. As e.spire's interconnection agreement with BA-NY also is subject to MFN, the Commission should clarify that, if Bell Atlantic is granted Section 271 authority, Bell Atlantic will be expressly required to extend all such MFN terms or conditions to similarly situated, requesting carriers in covered interconnection arrangements.

16 Among other things, FCC regulations require that Bell Atlantic provide competitors interconnection equivalent to the interconnection it provides itself. In addition, the NYPSC requires, among other things, that Bell Atlantic provide interconnection trunk requests within an 18-day interval. Bell Atlantic Pre-Filing Statement, Case No 97-C-0271, filed on April 6, 1998 at p.12 ("Pre-Filing Statement").

competition. Accordingly, as demonstrated in this section, Bell Atlantic has failed to meet one of its primary legal obligations, *i.e.*, providing competitors with nondiscriminatory access to UNEs and resale, under the Section 271 checklist.

A. **The application fails to make a *prima facie* case that Bell Atlantic has satisfied Section 271 requirements on provisioning of UNEs and resale**

Bell Atlantic has failed to make a *prima facie* case that it provisions UNEs and resale to competitors in compliance with Section 271, FCC and NYPSC requirements. First, Bell Atlantic's reliance on the performance benchmarks set in the NYPSC's "Performance Assurance Plan" ("PAP") to demonstrate Section 271-compliant provisioning is misplaced. *Cf.* Application at 88. The PAP only measures *aggregate* levels of performance. Under the PAP, Bell Atlantic would have the opportunity to offset poor provisioning performance in one category with good performance in another category. Moreover, the Commission held in the *BellSouth 271 II Order* that performance data that is not sufficiently disaggregated will not support grant of an RBOC Section 271 application.[17]

Moreover, Bell Atlantic does not even bother to provide performance data on its provisioning of certain UNEs, such as digital subscriber lines ("DSLs"), although the competitive availability of such elements play a vital role in the deployment of advanced telecommunications services competition in New York. Bell Atlantic explains that "[t]hese services are still new and require close cooperation from CLECs during the provisioning process." *See* Application at 24. Absent development of specific performance data on DSL

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[17] *See BellSouth 271 II Order*, at ¶ 92 ("BellSouth's failure to provide a sufficient level of disaggregation undermines the usefulness of BellSouth's performance data.")

provisioning, it is difficult to see how the FCC could reach the conclusion that the New York DSL market is competitive and the Bell Atlantic 271 authority is ripe for grant.

Finally, Bell Atlantic does not provide CLECs with interconnection trunks on an equivalent basis to trunks it provides itself.[18] Bell Atlantic's statement that "there have been difficulties in coordinating [interconnection trunk arrangements] with competing carriers," is reflective of delays we have experienced first-hand in obtaining installation of interconnection trunking arrangements with Bell Atlantic in New York. *Cf.* Application at 14. Bell Atlantic's attempt to disguise such delays as attributable to difficulties in "negotiation" or "coordination" are an attempted obfuscation.[19] In addition, the NYPSC's third-party audit of Bell Atlantic's performance in this area shows that there have been discrepancies in confirming due dates (called, "Local Service Confirmations") for Bell Atlantic fulfillment of CLEC interconnection trunk orders.[20]

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18 "Equal in quality" means that the ILEC "provide[s] interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party." *See Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in* Louisiana, CC Docket No. 98-121, FCC 98-271 at note 219 (released on October 13, 1998) ("*BellSouth 271 II Order*") (citing *Local Competition First Report and Order*, 11 FCC Rcd at 15614-5).

19 As the Commission noted in its *BellSouth 271 II Order*, the interval for measuring RBOC performance in provisioning interconnection trunks includes *pre-ordering* negotiation time – *i.e.* "the interval from when a competitive LEC initiates discussions with [an RBOC] until the competitive LEC actually obtains trunks." *Id.* at note 215.

20 *See, e.g.*, *KPMG Final Report* at POP5IV-112 ("LSCs in the Functional Evaluation were not consistently accurate and complete. 3.6% of total LSCs were returned incomplete. 79% of these income LSCs were missing [Service Order ID] Due Dates ("SOIDD")).

B. **Bell Atlantic has failed to meet FCC and NYPSC requirements, and e.spire's expectations, with regard to provisioning of interconnection trunking arrangements to e.spire**

In its pre-filing statement with the NYPSC, Bell Atlantic committed to provide interconnection trunk requests within an 18-day interval for requests of up to 192 trunks.[21] As discussed in this section, Bell Atlantic has consistently failed to meet these intervals with respect to e.spire requests for interconnection trunking arrangements. Furthermore, Bell Atlantic's intervals for provisioning interconnection trunks are much longer than the 18-day standard set by the NYPSC for up to 192 trunks. Bell Atlantic's actual intervals for provisioning interconnection trunks to e.spire have been much longer, resulting in anticompetitive delay in the provision of service to would-be e.spire customers.

Bell Atlantic's inability to meet interconnection trunk intervals is of particular concern to e.spire as a new entrant because e.spire has submitted forecasts to Bell Atlantic to deliver a substantial number of interconnection trunks over the course of the next year. e.spire anticipates a need for over a thousand trunks over the course of the next year. e.spire has experienced substantial delays with Bell Atlantic, and with other RBOCs, in other states relating to the failure to provision interconnection trunks on a timely basis. Based on e.spire's experience with Bell Atlantic's performance in New York to date, as described below, Bell Atlantic does not merit Section 271 approval with respect to Point 1 of the 14-Point checklist relating to interconnection trunking.[22] Moreover, while Bell Atlantic claims in its filing to have

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21 Bell Atlantic Pre-Filing Statement, Case No 97-C-0271, filed on April 6, 1998 at p.12 ("Pre-Filing Statement").

22 If interconnection trunking intervals meet the New York Commission's metrics in future filings, a finding of Section 271 compliance on this point may be appropriate.

met NYPSC metrics for provisioning, its actual performance with e.spire does not confirm these statistics. The FCC should ensure that e.spire's trunks are properly accounted for in the FCC's statistics. The FCC should also monitor Bell Atlantic's performance on future e.spire orders prior to approving Bell Atlantic on this point.

To provide an overview of Bell Atlantic's actual performance on interconnection trunks compared to the established intervals, we have attached a chart indicating where Bell Atlantic intervals exceeded the performance metric for such trunks. Those orders that included more than 192 trunks are treated separately from all other orders, and measured against a 30-day rather than an 18-day interval. See Chart Attached as Exhibit A. In addition, a table containing data in support of this Chart is attached as Exhibit B.

e.spire turned up its first switch in New York State – a Lucent 5ESS in New York City – in late August 1999. While Bell Atlantic worked in cooperation with e.spire to assist in turning up the e.spire switch, as required by Section 251, Bell Atlantic's poor performance in turning up interconnection trunks and associated DS-3s caused a substantial delay of almost four weeks in the e.spire switch turn-up. Bell Atlantic not only failed to meet e.spire's expectations, but also consistently failed to meet the performance metrics established by the New York Commission for interconnection trunk provisioning. Delaying e.spire's switch implementation directly resulted in delayed competition, and extends the time that putative e.spire customers remain on Bell Atlantic's network. This causes direct harm to e.spire, particularly in a market such as New York, where e.spire anticipates gaining a significant customer base. It also delays the advent of robust local competition, and harms customers who are denied new alternatives for purchasing e.spire's competitive services.

e.spire provided Bell Atlantic with its initial trunk plan for New York on April 19, 1999. e.spire anticipated an August 2, 1999 switch turn-up date, and built its sales staffing and business plan around that date. e.spire and Bell Atlantic met on April 21 in New York City to establish cooperatively the interconnection trunking plans, and discuss all major issues surrounding the switch turn-up. At various times throughout the process, Bell Atlantic made commitments to e.spire it would work with e.spire to meet the August 2 switch implementation deadline.

In areas where e.spire does not have its own fiber network, in order to turn up interconnection trunks, e.spire must first order DS-3 circuits from Bell Atlantic, and then order interconnection trunks, by trunk groups, over those circuits. On May 3, 1999 e.spire indicated to Bell Atlantic that e.spire needed to lease DS-3s from Bell Atlantic. On May 4, 1999, e.spire sent its Trunk Plan and Forecast to Bell Atlantic, providing a forecast through the end of the year 2000. On May 10, e.spire updated its Trunk Plan and Forecast to Bell Atlantic. On May 10, e.spire also ordered a total of 8 DS-3s from Bell Atlantic. On May 25, 1999, e.spire received initial feedback on the Firm Order Confirmations ("FOCs") for the DS-3s which suggested that they would not be delivered on a timely basis, and e.spire immediately escalated the issue. These were not the actual FOCs, but rather notice that the FOCs would not be favorable. The first FOCs were received on May 28, eighteen days after the orders were placed, and even then, all of the FOCs had not yet been received. The FOCs received indicated that one DS-3 would be delivered on June 2 (22 days after the orders were placed), three on June 10 (1 month after the orders were placed), two on June 21 (approximately 41 days after the orders were placed), and two received no FOC because facilities were not available. Those that received FOCs were delivered on the dates indicated in the FOCs, and in the intervals indicated above. The two for which there were facilities issues, however, were ultimately not delivered until July 15. Again, interconnection trunk orders could not even begin to be processed by Bell Atlantic over these DS-3s until the DS-3s were complete.

e.spire was initially told by Bell Atlantic that the DS-3 orders had to be completed before the interconnection trunk orders could even be placed. This seriatim approach to placing the orders makes it impossible for e.spire to even place its interconnection trunk orders – let alone complete them – while the DS-3 delays continued. Although Bell Atlantic claimed to have a "parallel ordering process" as of June 3, 1999, the process never materialized and, even when interconnection trunk orders were placed, Bell Atlantic did not begin its provisioning process for those trunks until the DS-3s were completed. For example, when interconnection trunk FOCs came back for other orders on June 30, 1999, no FOCs were received for those DS-3s that were still pending and could not be installed until July 15, 1999. Accordingly, while the Chart attached as Exhibit A shows that interconnection trunk orders were not met on a timely basis, this does not even take into account the fact that the orders were not even initiated in many instances until after long-delayed DS-3 circuits were completely installed.

As of June 3, 1999, e.spire and Bell Atlantic began a process of weekly conference calls to review the DS-3 and interconnection trunking plans. On June 8, 1999, e.spire ordered over 2000 trunks from Bell Atlantic. However, it was not until June 18, 1999, that e.spire could clear up all of Bell Atlantic's issues with the initial orders, despite the fact that a pre-ASR and subsequent conference calls occurred, and several of e.spire's provisioners had substantial prior experience as provisioners in the employment of Bell Atlantic. Accordingly, these trunk orders were resubmitted on June 18 to Bell Atlantic. The earliest date that any of these trunks were delivered to e.spire by Bell Atlantic was on July 20, over a month later. It should be noted that, as reflected in the *BellSouth 271 II Order*,[23] this type of pre-ordering delay should be incorporated into measuring Bell Atlantic's compliance with ordering intervals; and e.spire's calculations do not even include this pre-ordering delay.

On June 25, Bell Atlantic informed e.spire that it needed to change some of its tandem routes. These changes required e.spire to supplement several of its interconnection trunk orders, further impacting the trunk turn-up date.

On July 9, e.spire was able to submit additional trunk orders. The earliest date that any of these trunks were installed was August 5 (i.e., 23 business days later), again, close to a month's interval to fill these orders.

Finally, on July 12, e.spire submitted further interconnection trunk orders to Bell Atlantic. The earliest these orders were installed was August 6, an interval of approximately 19 business days.

The Time Line, attached as Exhibit A, demonstrates the delays experienced by e.spire. It also demonstrates the manner in which the interconnection trunk orders (indicated by circles) were pushed back by delays in the DS-3 orders (indicated by diamonds).

On July 23, 1999, Bell Atlantic assigned a new project manager to e.spire's interconnection trunk project, which was becoming an increasingly urgent crisis from e.spire's perspective. At the same time, Bell Atlantic issued its first master trunk spreadsheet for tracking purposes, a process that should have been initiated in early June when e.spire first began ordering trunks. It was clear to e.spire that some part of the substantial delays could be attributed to poor project management by Bell Atlantic. By August 17, 1999, the last interconnection

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[23] *BellSouth 271 II Order* at note 215.

trunks were finally turned up. This resulted in an August 27 switch turn-up, almost a full month after e.spire's initially projected date of August 2.

In sum, e.spire was substantially delayed by Bell Atlantic's poor organization, poor choice of management personnel, lack of process, and by processes that were designed to delay or, at best, had the effect of delaying. Not only was Bell Atlantic very late in delivering to e.spire, but e.spire only achieved the results it did due to constant expediting orders, escalating to higher management, calling emergency conference calls, and otherwise putting pressure on Bell Atlantic to deliver. This Bell Atlantic performance took place in the midst of the New York State 271 proceedings and on the eve of the federal filing, at a time when Bell Atlantic should have had the greatest incentive to perform on behalf of its new entrant competitors.[24]

Accordingly, e.spire's experience does not indicate that Bell Atlantic can consistently meet its interconnection trunk intervals. Until such time as Bell Atlantic can meet the Commission-mandated intervals, it should not be considered to have met the first point of Section 271's fourteen-point checklist. Withholding nondiscriminatory access to interconnection trunks and delaying provisioning has allowed Bell Atlantic to hamper facilities-based local competition. e.spire expects to place a substantial number of trunk orders which will provide Bell Atlantic a chance to demonstrate it can comply with performance requirements.

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24 e.spire raised a number of issues in its state commission filings, including extended links, for example. e.spire did not raise these interconnection issues in large part because they were in the process of unfolding and could not be evaluated until the conclusion of the switch turn-up. This is e.spire's first opportunity to bring these issues to the attention of federal and state regulators.

C. Bell Atlantic has failed to meet its provisioning obligations with respect to Net2000 interconnection requests in New York

Net2000 also has recent experience with Bell Atlantic's dismal provisioning process in New York. Bell Atlantic failed to respond to Net2000's repeated requests for an initial planning meeting for several months, even though this meeting is necessary to start the interconnection provisioning process. In addition to delays in setting up the planning meeting, Bell Atlantic also interposed certain time-consuming procedures into the provisioning process, such as a requirement that Net2000 "certify" its SS7 network – a certification requirement that no other ILEC to our knowledge imposes. As a sole result of these delays in the provisioning process, which were entirely within Bell Atlantic's control, Net2000's switch roll out in New York City has already been delayed by at least 60 days and initial delivery dates for Net2000 dialtone to new customers have been postponed.

Bell Atlantic has clearly failed to offer sufficient data on provisioning of its network elements or interconnection trunks to support grant of Section 271 authority. Sufficient supporting performance data is indispensable, given the real life experiences that carriers such as Net2000 are facing. Accordingly, Net2000's recent negotiation experience with Bell Atlantic provides additional evidence that Bell Atlantic is not committed to timely performance with regard to delivery of critical network components and entrance facilities.

V. THE PERFORMANCE MEASURES AND PENALTIES IN THE APPLICATION ARE NOT SUFFICIENT TO PROTECT COMPETITION AND DETER BACKSLIDING

e.spire and Net2000 are concerned that the NYPSC performance measures imposed on Bell Atlantic in the performance assurance plan ("PAP") and amended change control assurance plan ("CCAP") are insufficient to ensure pre- or post-Section 271 compliance. Under the PAP, Bell Atlantic is liable for up to a total of $150 million in billing credits for noncompliance with entry-based performance regulations, and an additional $75 million annually for violation of specified "critical measures." *See* Application at 88-9. The CCAP holds Bell Atlantic to annual penalties ranging from $10 to $34 million for specified provisioning and ordering non-compliance. However, setting limits on damages is not appropriate, given that the potential damage to competitors for RBOC non-compliance in provisioning, ordering and nondiscriminatory access under its Section 271 and Section 251 obligations will vary on a case-by-case basis and have the long-term effect of holding back the development of local competition. A predetermined limit on damages will allow an ILEC to perform a cost/benefit analysis in order to ascertain whether inhibiting the emergence of local competition is worth the cost of incurring penalties. In fact, the proposed financial penalties imposed through the PAP and CCAP are immaterial when compared to the billion dollar revenue flows that Bell Atlantic will realize through its provision of telecommunications services. This negative effect on competition will prevent the CLEC industry from effectively entering the local exchange market and cut against the pro-competitive vision of the 1996 Act.

Moreover, the PAP and CCAP safeguards do not comply with the *BellSouth 271 II Order*'s requirement that RBOC performance measures include "private and self-executing enforcement mechanisms that are automatically triggered by noncompliance with the applicable performance standard without resort to lengthy regulatory or judicial intervention." *Id.* at ¶ 364. In addition to penalties severe enough to deter deficient performance, such penalties must also be certain and administered immediately. Any delay in the implementation of damages will provide ILECs with additional opportunities to block the enforcement of damages and, consequently, squeeze competitors out of the local market through their proven ability to prolong litigation and regulatory proceedings. Accordingly, in light of the deficiencies in the New York antibacksliding measures, reliance on the PAP and CCAP plans is not sufficient to support grant of Bell Atlantic's Section 271 application.

If the Commission should decide to grant Bell Atlantic Section 271 authority, e.spire and Net2000 further submit that such grant must be conditioned on a multi-tiered approach to performance remedies such as those recently proposed by CompTel, AT&T and MCI/WorldCom.[25] We agree with these parties that it is necessary to create an appropriate set of performance measures geared toward nondiscriminatory service to CLECs, as well as a self-effectuating remedy plan that provides (1) sufficient financial incentives for RBOCs to comply with those measures, and (2) adequate compensation to CLECs adversely affected by an RBOC's noncompliance.[26] Only through the imposition of an immediate and sufficiently severe remedy plan will ILECs take affirmative steps to level the playing field for their competitors in the local exchange market.

First, we support a tiered approach to monetary remedies for RBOC noncompliance (i.e., baseline remedy would be paid to individual CLEC for a failure to provide nondiscriminatory service and support, or failure to meet an objective benchmark; an escalation of remedies for greater deviation from specified performance benchmarks; and finally, aggregate market suppression remedies paid to CLECs as a whole for a pattern of substandard ILEC

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25 *See Ex Parte* Letter from Robert J. Aamoth and Edward A. Yorkgitis, Jr. Counsel for CompTel to Michael Pryor, FCC, in CC Docket Nos. 96-98 and 98-121, dated June 4, 1999 ("CompTel Performance Standards Proposal"); Letter from Karen T. Reidy to Michael Pryor, FCC, dated June 2, 1999 ("AT&T-MCI/WorldCom Performance Remedies Proposal").

26 The remedy structure should apply equally to all ILECs, not just BOCs, except remedies related to section 271 authorization.

performance).[27] With regard to the market suppression remedies, Net2000 deviates from the AT&T – MCI/WorldCom proposal in that we suggest that such remedies be paid to a government-administered fund, such as the Universal Service Fund. Distribution of this type of market-wide remedy into this existing government-administered fund would benefit all CLECs, without imposing new administrative costs on the industry or consumers. We also support the CompTel proposal with respect to its first two tiers of performance remedies encompassing (i) suspension of section 271 authority and (ii) revocation of 271 authority, for varying degrees of RBOC noncompliance with submetrics.[28] Specifically, once RBOC non-compliance with submetrics affects CLECs on a market-wide basis (i.e., commensurate with the market suppression remedies discussed above) section 271 authority should be either suspended or revoked. The fear of losing the "carrot" of in-region long distance entry is required to prevent the ILECs from slowing down progress immediately following grant of Bell Atlantic Section 271 authority. Imposition of the above-mentioned monetary and performance remedies, at a minimum, are necessary to protect local competition in New York if the Commission decides to grant Bell Atlantic Section 271 authority.[29]

CONCLUSION

WHEREFORE, for the foregoing reasons, e.spire Communications, Inc. and Net2000 Communications Services, Inc. respectfully submit that Bell Atlantic's instant

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[27] *See* AT&T-MCI/WorldCom Performance Remedies Proposal. The development of benchmark details should be addressed in a follow-on FCC regulatory proceeding.

[28] *See* CompTel Performance Measures Letter at 3.

[29] Indeed, Section 271 recognizes this by explicitly acknowledging that the FCC may impose a penalty or suspend or revoke Section 271 authority if it determines that a BOC has ceased to meet any of the conditions for such Section 271 approval. *See* Section 271(d)(6)(A) of the 1996 Act.

application for in-region, interLATA Section 271 authority be denied. Bell Atlantic has failed to make the requisite public interest showing that the New York market is fully or irreversibly open to local competition to support grant of in-region, interLATA entry authority. Furthermore, to the extent that the Commission concludes that Section 271 authority should be granted to Bell Atlantic, we further strongly urge that such authority only be granted on the conditions as outlined above.

Respectfully submitted,

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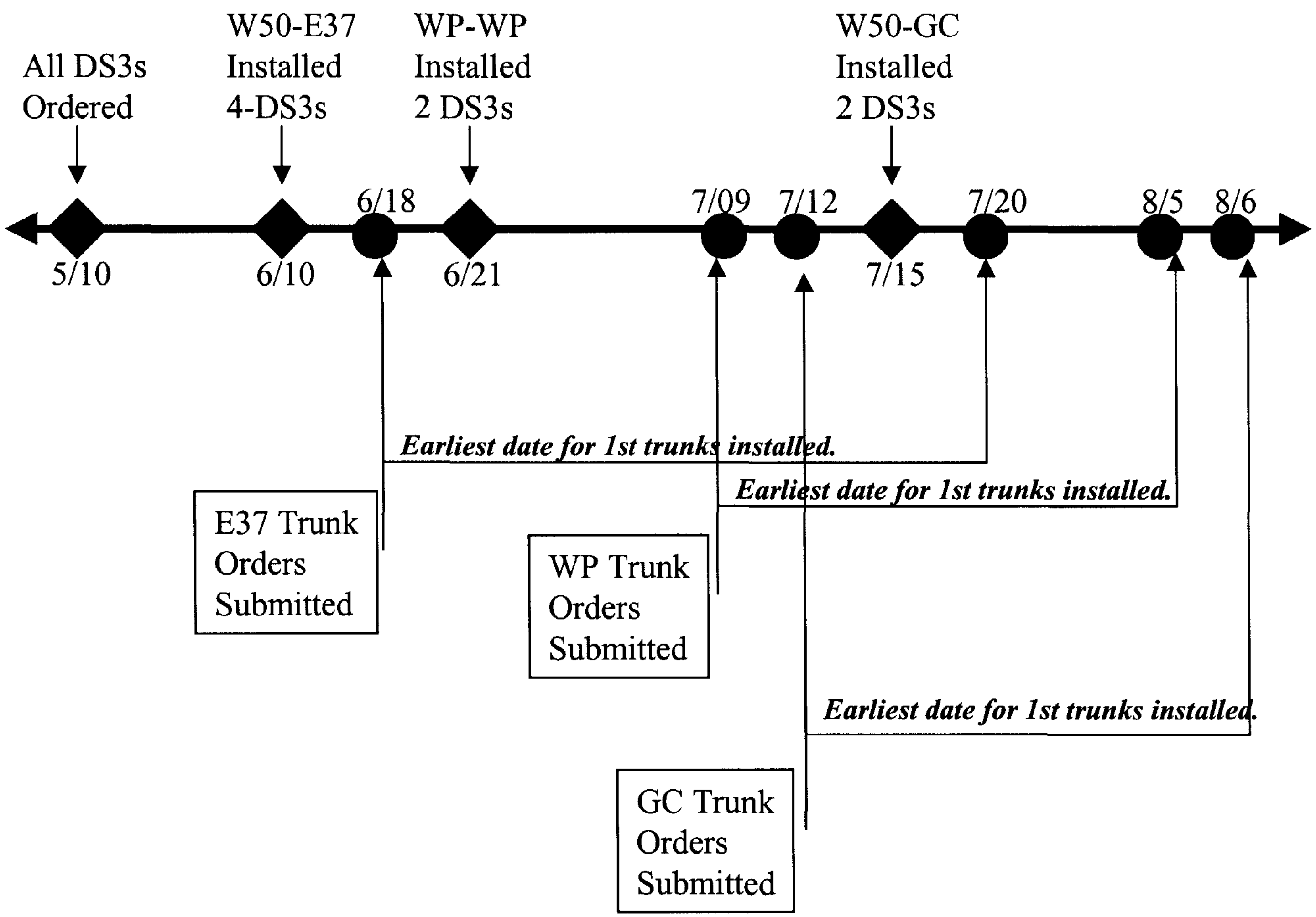
October 19, 1999

New Cities: New York

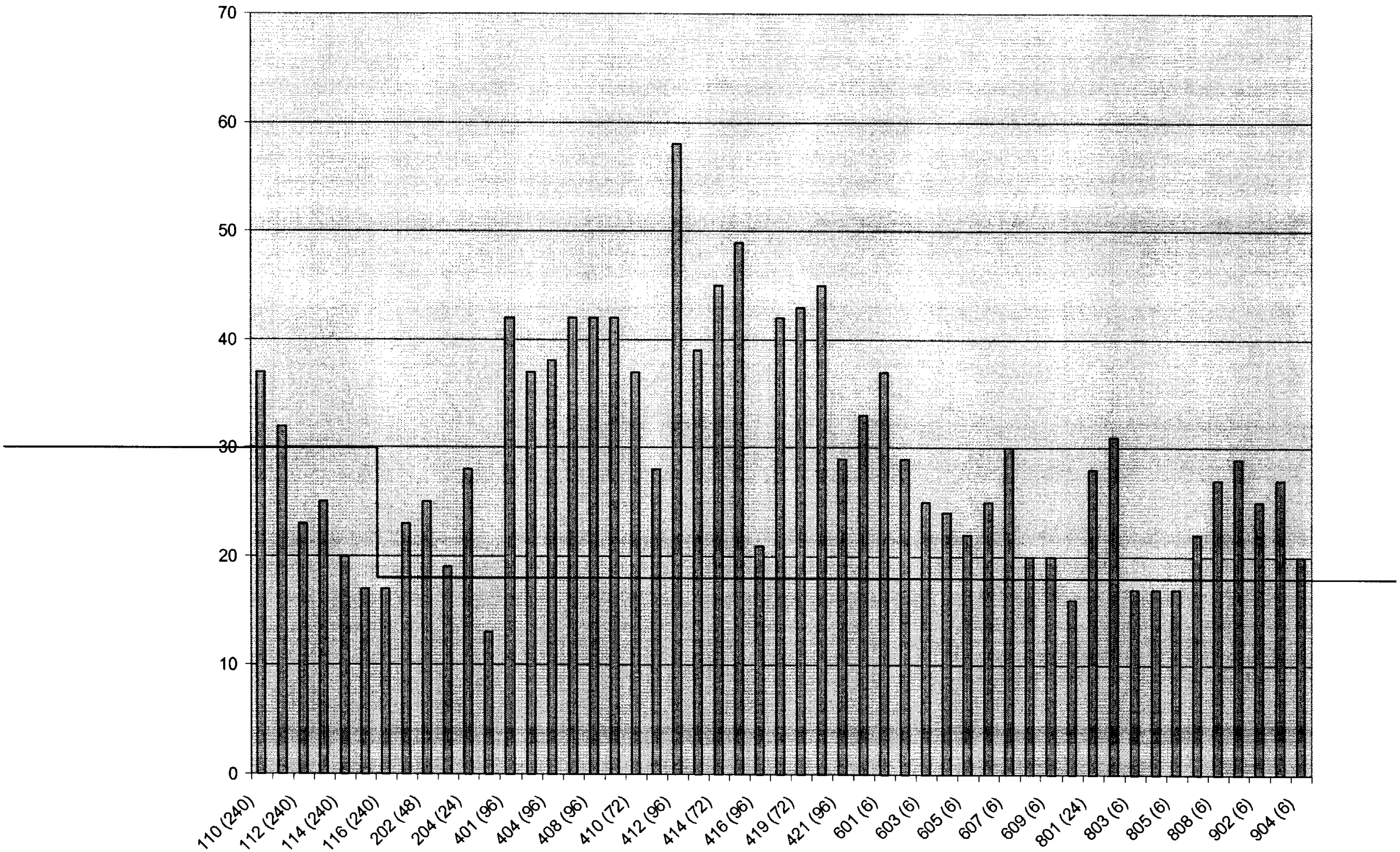
Event Summary

10/15/99

Time Line


All DS3s
Ordered
W50-E37
Installed
4-DS3s
WP-WP
Installed
2 DS3s
W50-GC
Installed
2 DS3s
5/10
6/10
6/18
6/21
7/09
7/12
7/15
7/20
8/5
8/6
Earliest date for 1st trunks installed.
Earliest date for 1st trunks installed.
Earliest date for 1st trunks installed.
E37 Trunk
Orders
Submitted
WP Trunk
Orders
Submitted
GC Trunk
Orders
Submitted

Elapsed (Business) Days



	Report Date:					
LOCATION	TG	No. Trunks	Working Days	ASR SENT	FOC RECVD	FOC DATE
GC	110 (240)	240	37	07/12/99		09/04/99
37	111 (240)	240	32	06/18/99		08/03/99
37	112 (240)	240	23	06/18/99		07/20/99
37	113 (240)	240	25	06/18/99		07/23/99
WP	114 (240)	240	20	07/09/99		08/07/99
GC	115 (240)	240	17	07/12/99		08/06/99
GC	116 (240)	240	17	07/12/99		08/06/99
37	201 (144)	144	23	06/18/99		07/20/99
37	202 (48)	48	25	06/18/99		07/22/99
WP	203 (96)	96	19	07/09/99		08/05/99
37	204 (24)	24	28	06/18/99		07/27/99
37	205 (96)	96	13	07/21/99		08/09/99
37	401 (96)	96	42	06/18/99		08/16/99
37	402 (96)	96	37	06/18/99		08/10/99
37	404 (96)	96	38	06/18/99		08/11/99
37	407 (96)	96	42	06/18/99		08/17/99
37	408 (96)	96	42	06/18/99		08/17/99
37	409 (96)	96	42	06/18/99		08/17/99
37	410 (72)	72	37	06/18/99		08/10/99
WP	411 (96)	96	28	07/09/99		08/18/99
37	412 (96)	96	58	06/18/99		09/09/99
37	413 (48)	48	39	06/18/99		08/12/99
37	414 (72)	72	45	06/18/99		08/20/99
37	415 (48)	48	49	06/18/99		08/26/99
GC	416 (96)	96	21	07/12/99		08/11/99
37	418 (72)	72	42	06/18/99		08/17/99
37	419 (72)	72	43	06/18/99		08/18/99
37	420 (72)	72	45	06/18/99		08/20/99
37	421 (96)	96	29	06/18/99		07/28/99
37	422 (96)	96	33	06/18/99		08/04/99
37	601 (6)	6	37	06/18/99		08/09/99
37	602 (6)	6	29	06/18/99		07/28/99
37	603 (6)	6	25	06/18/99		07/22/99
WP	604 (6)	6	24	07/09/99		08/12/99
GC	605 (6)	6	22	07/12/99		08/13/99
37	606 (6)	6	25	06/18/99		07/22/99
37	607 (6)	6	30	06/18/99		07/29/99
GC	608 (6)	6	20	07/12/99		08/10/99
WP	609 (6)	6	20	07/09/99		08/06/99
37	701 (6)	6	16	07/09/99		08/01/99
37	801 (24)	24	28	06/18/99		07/27/99
37	802 (24)	24	31	06/18/99		07/31/99
GC	803 (6)	6	17	07/12/99		08/06/99
GC	804 (6)	6	17	07/12/99		08/06/99
GC	805 (6)	6	17	07/12/99		08/06/99
WP	807 (6)	6	22	07/09/99		08/10/99
WP	808 (6)	6	27	07/09/99		08/17/99
37	901 (6)	6	29	06/18/99		07/28/99
37	902 (6)	6	25	06/18/99		07/22/99
GC	903 (6)	6	27	07/09/99		08/16/99
WP	904 (6)	6	20	07/09/99		08/06/99

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 1999, a copy of the foregoing **"Joint Comments of e.spire Communications, Inc. and Net2000 Communications Services, Inc."** was delivered by hand or first-class mail to the following:

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